

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SOVEREIGN BANCORP, INC.,
SOVEREIGN BANK,
SEACOAST FINANCIAL SERVICES
CORP.; and COMPASS BANK FOR
SAVINGS,

Plaintiffs,

vs.

JOHN H. HARLAND COMPANY,

Defendant.

Civil Action No. 04-11631-EFH

PLAINTIFFS' MOTION TO DISMISS
DEFENDANT JOHN H. HARLAND'S COUNTERCLAIMS

Pursuant to Rule 12(b)(6), Plaintiffs, Sovereign Bancorp, Inc. ("Sovereign Bancorp"), Sovereign Bank ("Sovereign"), Seacoast Financial Services Corp. ("Seacoast") and Compass Bank for Savings ("Compass") (collectively "Plaintiffs"), hereby move to Dismiss the Defendant John H. Harland Company's ("Harland's") Counterclaims, and all counts therein.

The grounds for this motion are set forth fully in the accompanying Memorandum in Support of Plaintiffs' Motion to Dismiss. In essence, the Defendants counterclaims against the Plaintiffs each fail to state a claim as a matter of law because they are premised upon the validity of an unenforceable, purported requirements contract (the "Checks Agreement"). An examination of the Checks Agreement reveals that the only "promise" Defendant Harland makes to Plaintiff Compass (and Plaintiffs' predecessor in interest) is to offer its goods at its discretion and at prices which it unilaterally retains the power to change. Pursuant to the parties' choice of

law provision, the law of the State of Georgia applies. Pursuant to Georgia law, the Checks Agreement is void for lack of mutuality. Furthermore, pursuant to Georgia law, no consideration of "extraneous evidence," such as the parties' intentions or course of dealings, is permissible.

WHEREFORE, Plaintiffs, Sovereign Bancorp, Inc., Sovereign Bank, Seacoast Financial Services Corp. and Compass Bank for Savings, respectfully request that the court declare the Checks Agreement to be unenforceable for lack of mutuality, and dismiss each count of Harland's counterclaims against Plaintiffs.

Respectfully submitted,

SOVEREIGN BANCORP, INC.;
SOVEREIGN BANK; SEACOAST
FINANCIAL SERVICES CORP.; and
COMPASS BANK FOR SAVINGS,

By their attorneys,

/s/ John W. Steinmetz

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Dated: August 18, 2004

LOCAL RULE 7.1 (A) (2) CERTIFICATION

I, Paula S. Bliss, counsel for Plaintiffs Sovereign Bancorp, Inc., Sovereign Bank, Seacoast Financial Services Corp. and Compass Bank for Savings hereby certify that I have conferred with Steven Buttacavoli, counsel for defendant, John H. Harland, in a good faith effort to resolve and narrow the matters at issue concerning plaintiffs' Motion to Dismiss and, despite their good faith efforts, the parties were unable to reach an agreement.

/s/ Paula S. Bliss

Paula S. Bliss, Esq. (BBO# 652361)

CERTIFICATE OF SERVICE

I, Lee M. Holland, hereby certify that on this 18th day of August 2004 a copy of the foregoing was faxed and mailed, postage prepaid, to:

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/s/ Lee M. Holland

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